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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,633	11/07/2001	Clemente Conde	EASY:021	9243

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EXAMINER

ALIMENTI, SUSAN C

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 09/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/039,633	CONDE, CLEMENTE
	Examiner Susan C. Alimenti	Art Unit 3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. §133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 November 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.
- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) 10 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim10 is objected to because of the following informalities: In line10 of claim 10 delete the word "the" that appears after the phrase "prior to". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claim1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "the other" in line 7. There is insufficient antecedent basis for this limitation in the claim. It is suggested to replace the above phrase with "another".

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bradley et al. (US 5,456,045).

Bradley et al. (Bradley hereafter) discloses the claimed invention as cited in claims 1-3 and 6-8. Bradley discloses a lawn edging strip, as seen in Figure 1, comprising a flexible body

10 with flaps 24, 26 on either end, and each flap either comprises a tongue connector 98 or a pocket connector 106. The pocket connector 106 has a slot 104 that receives the tongue 102 of another edging strip and locks it into place, preventing them from separating in the longitudinal direction. With regard to claim 2, the tongue 102 is guided into the locked position by vertically lining up the tongue 102 with the notch 104. The locking mechanism is further assisted by the curved feature of the top edge of the notch 104.

Regarding claim 6, Bradley shows in Figure 14 the versatility of the device as it further comprises a second tongue 126 that allows for the strip to be shortened and yet still capable of connecting properly to another strip. This function is further described in column 6, lines 1-9.

Regarding claim 7 the tongue connector 106 and the pocket connector 98 are oriented such that they are mated for alignment in a direction perpendicular to a length of the edging strip. With regard to claim 8, the bottom edge 20 of Bradley's device is configured so to allow forced insertion of the bottom edge into the ground, and the top edge 18 is constructed to withstand a hammering force necessary for insertion.

6. Claims 10-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Northrop et al. (US 6,026,610).

Northrop et al. (Northrop hereafter) discloses a method for providing a lawn edging strip as described in claims 10-19. Northrop's method comprises providing a lawn edging strip, as seen in Figures 1 and 2, with a flexible body 10, a tongue connector 58 at a first end 16, and a pocket connector 52 at a second end 14. When the tongue connector of one lawn edging strip is placed for alignment with another lawn edging device, they slide together being guided along slot 52. This can be done before or after one of the lawn edging devices have been inserted into

the ground. Once the two ends have been slid together with the tongue 58 inserted into the notch 52, they are in a locked position, preventing the disengagement of the two elements.

Regarding claims 11-15 the second end 14 contains the pocket connection, which comprises a notch 52 formed in said end. This notch receives the tongue connector 58 and provides a locking mechanism. The notch 52 also serves to guide the tongue 58 into the fully inserted and locked position. With regard to claim 15, the upper rim or lip 52A (See Examiner's reference character in Figure 1) of notch 52 is sized to engage the tongue connector 58.

Regarding claims 16-19, and the aforesaid discussion above, Northrop's method further comprises at least a portion 56 of the flexible body 10 extending on the top of the first end 16 and the tongue connector 58, as seen in Figures 1 and 2. When two ends of separate lawn edging strips are placed together for alignment and connection, a continuous structural appearance is maintained, further providing for the ornamental features of the device.

#### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradley as applied to claims 1-3 and 6-8 above, and further in view of Smith et al. (US 5,720,128).

Bradley discloses the claimed invention except the form of the notch is slightly different in structure. Bradley's device comprises a guide feature as the top edge of notch 104 is curved

down and toward the interior of the notch and the tongue connector 102 and notch are generally rectangular in shape, however it does not comprise a lip at the end of this curve or guide feature, and the notch is not sized slightly smaller than the width of the tongue connector 102. Smith et al. discloses a lawn edging strip in the same field of endeavor that has a notch structure 32 teaching the use of a lip 50 (See Examiner's reference characters in Figure 4) and a narrowing 51 of the notch to a width smaller than the mating tongue connector 30. Once the tongue connector 30 is fitted inside the notch 32, the connection becomes locked in the direction parallel axis of alignment, as well as the axis perpendicular to the axis of alignment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bradley's locking feature by incorporating Smith et al.'s notch structure in order to provide a more secure connection, preventing movement of the tongue connector in two axis of movement instead of one.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bradley as applied to claims 1-3 and 6-8 above, and further in view of Northrop.

Bradley discloses the claimed invention of claim 9, except the top edge 42 extends over the pocket connector 106 instead of the tongue connector 98. Northrop discloses a lawn edging strip in the same field of endeavor that teaches the extension of a top edge 56 over a tongue connector 58. It would have been obvious to one of ordinary skill in the art at the time the invention was made to move the top edge in Bradley's device to the end that has the tongue connector since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

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10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Northrop as applied to claims 10-19 above, and further in view of Bradley.

Northrop discloses the claimed method except an optional end section is not provided within the flexible body to allow for selectively varying the length thereof. Bradley discloses a lawn edging device, as seen in Figures 14 and 15, in the same field of endeavor that teaches the use of additional and optional end connectors formed within the length of the flexible body that provide the user with more length options. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide optional end locations in order to allow for length adjustability.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is (703)306-0360. The examiner can normally be reached on Monday-Thursday, 7:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan can be reached on 703-306-4159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

SCA  
September 16, 2002

*Charles T. Jordan*  
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